

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

ALVIN LYNN TRANTHAM,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV 07-156-JHP-KEW
)	
GREG PROVINCE, Warden,)	
)	
Respondent.)	

OPINION AND ORDER

Petitioner Alvin Lynn Trantham's counsel has filed an ex parte motion to extend the time for filing a notice of appeal, pursuant to Fed. R. App. Pro. 4(a)(5). He alleges a notice of appeal was due on October 21, 2010, but there is good cause for extending the deadline to November 20, 2010.

Counsel alleges he immediately transmitted the court's September 21, 2010, order dismissing petitioner's habeas corpus petition to petitioner, who is incarcerated at the Dick Connor Correctional Center in Hominy, Oklahoma. Counsel also sent copies to petitioner's parents who have paid counsel's fees and expenses in this litigation. The parents met with petitioner concerning whether to pursue an appeal and discussed with him their serious financial constraints. Petitioner's parents were willing to pursue the appeal if petitioner insisted, but they asked petitioner to consider their financial situation and counsel's advice before making a decision about an appeal.

Counsel represents that since that meeting, petitioner has not been in contact with counsel or petitioner's parents, and the frequent lock-downs at the facility may have prevented petitioner from making phone calls. Counsel asserts he has been unable to travel

to petitioner's facility to consult with him about an appeal. Counsel, therefore, contends an extension of the appeal deadline would allow petitioner time to contact his parents and counsel and inform them of his decision about an appeal.

Pursuant to Fed. R. App. Pro. 4(a)(5), the district court may extend the time to file a notice of appeal if a party "shows excusable neglect or good cause." Petitioner's counsel alleges excusable neglect is not at issue, and the court finds counsel has failed to show good cause. There is no indication that petitioner intended to file an appeal, and counsel is merely speculating that petitioner *may* decide to file an appeal. These circumstances do not constitute good cause.

ACCORDINGLY, petitioner's motion to extend time for filing notice of appeal [Docket #16] is DENIED.

IT IS SO ORDERED this 28th day of October 2010.


James H. Payne
United States District Judge
Eastern District of Oklahoma